

### REMARKS

Upon entry of this paper, claims 1 -8 have been canceled, claims 9-10 have been amended, and claim 11 has been added as a new claim. Thus claims 9 -11 are currently pending in the application. No new matter has been added. The cancellation of claims 1 - 8 should in no way be construed to be an acquiescence to any of the rejections stated. Claims 1 - 8 are being canceled solely to expedite the prosecution of the present application. Applicant reserves the option to further prosecute the same or similar claims in the instant or a subsequent patent application.

Applicant has amended the claims to better define the invention as a cranberry picking improvement directed to a conveyor transfer device for use with a walk behind cranberry harvester. Applicant is claiming a device that is used in combination with a self propelled collection bin configured to be employed as a shipping container with a minimum of handling of the cranberry fruit. In view of the claims as amended, Applicant submits that the patent to Behnke is not properly combinable to the patents to Getsinger, and Cosimati.

#### **Claim Objections**

Claims 5, 7, and 8 were rejected by the Examiner's however Applicant has canceled Claims 5, 7, and 8.

#### **Claim Rejections - 35 USC §102**

Claims 1, 9-10 were rejected under 35 U.S.C. 102 (b) as being anticipated by *Getsinger* (2,795,099), (*Getsinger '099'*),

Applicant has canceled Claim 1, and amended claims 9 - 10.

These rejections are respectfully traversed in view of applicant's cancellation of claim 1, and amendment of claims 9 - 10 to better define the nature of the invention, and in view of the following comments.

Claims 1 and 2 were rejected under 35 U.S.C. 102 (b) as being anticipated by *Cosimati* (5,210,999), (*"Cosimati '999"*),

Applicant has canceled claims 1 and 2

These rejections are respectfully traversed in view of applicant's cancellation of these claims and addition of new claims to better define the nature of the invention, and in view of the following comments.

Applicant has recognized the problem hitherto not recognized by the prior art, or the references applied against the claims under 35 USC §102 and § 103. The problem identified by Applicant is that present invention is directed to an apparatus for addressing the unique needs of protecting cranberries during harvesting and shipping from damage and deterioration..

Applicant has solved the problem by providing in the present invention a self propelled collection bin configured to be employed as a shipping container with a minimum of handling of the cranberry fruit

In view of the above, Applicant respectfully requests reconsideration and withdrawal of this rejection.

### **Claim rejections under 35 U.S.C. 103**

Claims 3-6; were rejected under 35 U.S.C. 103 (a); as being unpatentable over *Cosimati* (5,210,999), ("*Cosimati '999*"), in view of *Behnke et al.* (6,682,416) ("*Behnke '416*").

Claims 7 and 8 were rejected under 35 U.S.C. 103 (a); as being unpatentable over *Cosimati* (5,210,999), ("*Cosimati '999*"),

These rejections are respectfully traversed in view of applicants amendments to the claims and new claim which better define the nature of the invention, and in view of the following comments.

Applicant has canceled Claims 1 - 8 . Applicant has amended claims to claim a usable means for loading a shipping container with a minimum of handling of cranberry fruit. Applicant submits that combining the elements of the apparatus of Getsinger with the apparatus of Behnke would not arrive at applicant's invention. In fact, it appears that combining the elements of these two patents would result in a system that is incapable of

providing conveyor on a walk-behind cranberry fruit harvester for use in a cranberry bog for loading stripped fruit directly into an associated self propelled collection bin on a the cranberry bog configured to be employed as a shipping container. Accordingly, the apparatus resulting from combining the teachings of the two patents would not provide a usable means for loading a shipping container with a minimum of handling of cranberry fruit. References cited fail to show such a novel feature.

Applicant respectfully submits that unless a *prima facie case* of unpatentability with respect to known facts is established, applicant is not obliged to proffer any evidence of nonobviousness. To establish a *prima facie case* there must be some suggestion or motivation, either in the prior art or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine multiple reference teachings. There must then be a reasonable expectation of success. Finally, the prior art reference or references (when) combined) must teach or suggest all the claimed limitations. The Office action relies on knowledge generally available to one of ordinary skill in the art to make the suggested combination.

In addition, there must be some reasonable expectation of success. Accordingly if a proposed modification would render the prior art invention being modified *unsatisfactory for its intended purpose, then there is no suggestion to make the proposed modification*.

See MPEP § 2143.01

To that end, Applicant further submits that the above references would be rendered unsatisfactory for their respective purposes if a "conveyor on a walk-behind cranberry fruit harvester for use in a cranberry bog for loading stripped fruit directly into an associated self propelled collection bin on a the cranberry bog configured to be employed as a shipping container" were utilized as suggested in the Office Action.

Referring to the factual inquiries set forth in Graham v. John Deere Co. include inquiry as to the scope and contents of the prior art. For the reasons stated above, Applicant submits that for the claims as now amended, the selection of the above references for the prior art employed as the basis for the primary rejection is not warranted.. Applicant has amended claims 9- 10 and new claim 11 to better define the invention and claim a conveyor on a walk-behind cranberry fruit harvester for use in a cranberry bog for loading stripped

fruit directly into an associated self propelled collection bin on a the cranberry bog configured to be employed as a shipping container component. References cited fail to show such a novel feature. Referring to the claims as amended there is no suggestion or motivation in any of the references applied to the obviousness rejection for the modification or combination of reference teaching to make the pending claimed invention obvious. The pending obviousness rejections rely on the knowledge generally available to one of ordinary skill in the art to modify or combine the cited references.

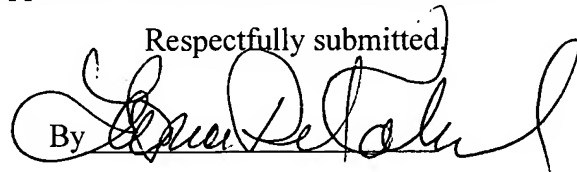
Accordingly, Applicant respectfully requests reconsideration and withdrawal of this obviousness rejection.

Applicant therefore respectfully submits that the proposed combinations fail to teach or suggest every characteristic of Applicant's Claims 9 -10, as amended and new claim 11, and thus claims 9 - 11 are allowable. Applicant further submits that all pending claims of the present invention are not obvious with respect to, and are therefore allowable over, the cited documents.

#### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that this application is now in condition for allowance. Applicant courteously solicits allowance of the pending claims in the form of a Notice of Allowance.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there be any outstanding issues of patentability following entry of this response, Applicant respectfully requests that the Examiner attempt to resolve such issues via a subsequent telephone interview to Applicant's below signed representative.

Respectfully submitted,  
  
By

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Date: May 24, 2005